THE SPEAKER AND HIS CRITICS.

BY A DEMOCRATIC LEADER.

THE filibustering tactics by which, in recent years, the minorities of legislative bodies have sought to prevent the majorities from exercising control over parliamentary business have awakened in many minds serious doubts as to the future of parliamentary governments. Government by party is an almost essential feature of representative institutions. The party which is in the minority to-day will be in the majority to-morrow. Success carries with it the seeds of disaster. Sooner or later every party majority becomes unpopular, and dissatisfaction is inevitably followed by defeat. If parliamentary obstruction be permissible or defensible, government by majorities is necessarily impossible. Few, indeed, have ever disputed the cardinal principle that a majority is entitled to the absolute control of legislative business; yet when obstructive tactics are practised day by day, every attempt of the majority to protect its own powers is usually assailed and vehemently condemned as an invasion of the rights of the minority.

A rule recently adopted by the House of Representatives to prevent a very common method of obstruction has, however, evoked an extraordinary degree of criticism. This rule has generally been attributed to the Speaker of the present House, and it has been made the subject of a very ingenious criticism by a member of his own party whose identity remains concealed.

In dealing with parliamentary obstructions it has always been exceedingly difficult to devise rules which would operate to suppress the practice without invading in some degree those privileges of individual members which have heretofore been jealously guarded by all parliamentary bodies. The particular rule, however, which has provoked such severe animadversion from the distinguished Republican who signs himself "X. M. C." must inevitably appear to an impartial mind to be less objectionable than

many rules which have gone into practice almost without a protest. Briefly stated, Rule XV. permits a quorum to be counted when a quorum is actually present, notwithstanding the refusal of any number of members to answer the roll-call.

In assailing the rule, its critics have taken the ground that the House is without a quorum when a majority fail to answer the roll-call, although ninety-nine-one-hundredths of all the members may be actually sitting in their seats. This proposition is supported with great ingenuity by X. M. C., but a careful examination of his argument serves only to illustrate the fallacy of his position.

It is hardly necessary to waste time in a discussion of the proposition that Rule XV. is in absolute and irreconcilable contradiction to Rule VIII. The entire argument of X. M. C. on this subject shows more humor than honesty, more wit than wisdom. Placing the two rules in juxtaposition, it is difficult to see how they are in the slightest degree irreconcilable with each other. Rule VIII. provides that it is the duty of every member to be present in the House during the sittings, and to vote upon every question unless excused. Rule XV. simply provides that, if a member prove contumacious and disregard the provision of Rule VIII., his disobedience shall not affect the power of the House to transact its business. "Was the Eighth rule," asks X. M. C., "inserted in the code of the House to remain unenforced, while Speaker Reed, in a spirit of plenary indulgence, invented the Fifteenth rule for the ease and convenience of members? . . . One cannot be enforced without destroying the other."

In what sense are they absolutely irreconcilable? It is none the less the duty of every member to vote because, if he fails to do so, his presence in the House shall be noted and he himself counted as one of the quorum. It is true that no penalty is provided for a violation of Rule VIII., but to violate it is none the less a transgression of the duty of a member. Disorderly conduct in the House is usually punished by the censure of the House, pronounced by the Speaker on the offending member. Would X. M. C. claim that the censuring of a member who offends the dignity of the House relieves him of all obligation to maintain a decorous and orderly demeanor? Would he contend that no member need behave himself because, by accept-

ing the censure of the Speaker, he might be as disorderly as he pleased?

In point of fact, the two rules are entirely consistent with each other. Rule XV. is the complement of Rule VIII. The last-mentioned rule prescribes the duty of the member; the first-mentioned rule provides for the protection of the House from the consequences which would otherwise flow from what X. M. C. justly describes as the disorderly conduct of a minority.

The fundamental error into which X. M. C. and the other critics of Rule XV. have fallen is the assumption that a quorum of the House can be ascertained only by calling the yeas and nays. It is difficult to understand on what this proposition is based. We cannot find anything in the Constitution which in express terms justifies it. In the English House of Commons, from which our parliamentary system is derived, the existence of a quorum is determined by an actual count of the members present. The Federal Constitution provides that a majority of the members present shall constitute a quorum, and that no business can be done unless a quorum be present.

According to X. M. C., this provision means not only that a quorum must be present, but that sufficient members to constitute a quorum must actually respond to their names on a call of the roll. There being no specific warrant for this assertion in the Constitution, he seeks to prove that it is the inevitable conclusion to be drawn from other constitutional provisions. He quotes Section 7 of Article I. of the Constitution, which provides for the passage of a bill over the veto of the President by a vote of two-thirds of the members of each House, and he lays special stress upon the clause which requires that in all such cases the votes of both houses shall be determined by the yeas and nays.

If the framers of the Constitution intended that the presence of a quorum should be determined by the yeas and nays, it is difficult to conceive any reason why they should not have expressed their intention in words and inserted them in the Constitution itself.

There is a perfectly valid reason for requiring that the votes of the two houses shall be determined by the yeas and nays when the passage of a bill over the veto of the President is involved, which appears to have been overlooked by X. M. C.

The right to pass a bill over the veto of the Executive was an innovation in parliamentary government. When our Constitution was framed, the veto of the king was an absolute bar to legislation, and although no British monarch for a century had assumed to forbid the enactment of any law which had passed both houses of Parliament, in theory at least the assent of the sovereign was still essential to the validity of every act of Parliament. When, therefore, the authors of our organic law undertook to subject the veto power of the President to the control of Congress, it was perfectly natural that they should provide that the assertion of the supremacy of the legislative over the executive department should be attended by certain solemnities which might be dispensed with in the ordinary exercise of legislative functions. X. M. C., however, claims that the constitutional provision which requires that the votes of both houses shall be determined by the yeas and nays when the veto of the President is under consideration, carries with it by implication a constitutional mandate that the number of members present in the House shall be determined by the same method.

On this subject his argument is so original and interesting that it is impossible to paraphrase or condense it without doing injustice to the humor and ingenuity of the author. It is therefore given in full.

"Let us suppose that a bill (Senate Bill No. 1129, for example) is vetoed by the President. It is returned to the Senate, and, coming up for reconsideration, is passed over the veto by a vote of 50 yeas to 24 nays. Two-thirds have thus voted in the affirmative, and the total vote (74) is undoubtedly a quorum of the Senate. The bill goes to the House, and the House votes 90 in the affirmative and 40 in the negative. Two-thirds of those voting have thus voted to override the veto, but the total vote is only 130—36 short of a quorum and but 20 more than one-third of the House. It is precisely the same aggregate vote on which Speaker Reed declared that the bill to 'admit Idaho as a State in the Union' had been duly passed. He did this on the declaration that the number of members present and '*not voting*' added to those '*voting*' made up a quorum of the House. Would Speaker Reed on the same principle declare that the two-thirds vote of 90 to 40 had passed the bill over the President's veto?

"The Constitution says that in passing a bill over a veto the votes of both houses 'shall be determined by yeas and nays.' If 'determined by yeas and nays,' how can Speaker Reed count a class of members who voted neither yea nor nay? The vote given by yeas and nays lacks 36 of a quorum. Under what rule can the Speaker add 36 who did not vote to the 130 who did vote? On which side will he count them? He cannot know how they would vote. If he divides them evenly between the two sides, it will give 18 to each, and the vote will then stand 108 to 58. That changes the result, because it does not show a two-thirds vote in the affirmative. Observe, further, that the clause in the Constitution says, 'if *two-thirds* of the house [to which the bill is returned] *shall agree* to pass the bill, it shall be sent to the other house, and if *approved by two-thirds* of that house, it shall become a law.' Two-thirds of 'that

house' must be two-thirds of a quorum. It is not a house until a quorum is acting. When Speaker Reed shall have recorded the 36 members, would he declare the 90 votes as the *approval* of *two-thirds* of the whole quorum of 166, as made up under his famous Rule XV.?

"It would be interesting, when the Constitution declares that the 'votes' shall be determined by '*yeas* and *nays*,' to hear how the Speaker can 'determine' the votes by any other process. In all other cases, it will be observed that the *yeas* and *nays* can only be called on demand of at least one-fifth of the members present, but in the case of overriding a veto of the President, the Constitution itself directs the calling and recording of the *yeas* and *nays*. The purpose of this specific direction is to guard against all doubt in 'determining' the result of the vote, for it is not only the interest of every one to have a correct result, but it is the special right of the President to know with exactness the vote by which a bill is passed over his veto and made a law against his consent.

"How would Speaker Reed communicate to the President the supposed result of 90 yeas to 40 nays, when a quorum is 166? It would seem very lame and awkward for the Speaker to state the simple facts of the case. He would be compelled to frame his communication somewhat as follows:

"'FIFTY-FIRST CONGRESS,
HOUSE OF REPRESENTATIVES,
WASHINGTON, ——, 1890.

"'TO THE PRESIDENT:

"'In the vote of the House to determine whether "Senate Bill No. 1129" should pass against your objections, the *yeas* were 90 and the *nays* were 40—more than two-thirds in the affirmative. You will observe that the total vote falls short of a quorum, but under Rule XV. the Clerk of the House has entered on the Journal the names of 36 members who were present in the hall at the time the *yeas* and *nays* were called, *but declined to vote*. Under Rule XV., however, they are permitted to maintain silence and are held to form part of the quorum, just as if they had voted. No one can tell what their votes would have been if they had obeyed Rule VIII., which commands that "every member present within the hall of the House during its sitting shall vote upon each question put." The enclosed extract from the Journal will give you the names of the voting and of the non-voting members of the quorum. Of course the number of names recorded as voting does not answer the Constitutional requirement to override your veto, but you are probably aware of my decision that "attendance alone is necessary."

"'Your obedient servant,
"'THOMAS B. REED, Speaker.'"

This letter is a striking illustration of extravagance in criticism. The entire argument of X. M. C. on this branch of the subject has been inserted in this article, as it forms the strongest and most trenchant criticism of the possible operation of Rule XV. in an extreme case. It is, however, obvious that the criticism overshoots itself. The very letter which he satirically assumes the Speaker would send to the Executive would, if sent, constitute a forcible statement that in the case assumed by X. M. C. the House had refused to pass the bill over the President's veto. If the number of members present actually amounted to 166, and 90 voted to override the veto, two things are absolutely plain: first, that a quorum was present; and, secondly, that two-thirds of the House—that is to say, of the quorum—did not agree to pass the bill notwithstanding the objections of the President. When we speak of the House, we mean the quorum, as X. M. C. very clearly points out. If, therefore, two-thirds of the quorum—

that is to say, two-thirds of the 166 members ascertained to be present—had not concurred in the passage of the bill, the veto could not have been overridden. The presence of the quorum having been ascertained, and only ninety votes having been cast for the bill, it would follow inevitably that two-thirds of the House had refused to agree to the measure, and the letter of the Speaker would be an unmistakable announcement of that fact.

Again, X. M. C. strenuously insists that Speaker Reed's method of determining a quorum is obviously inapplicable to every legislative proceeding where the concurrence of two-thirds of the members of either house is made essential by the Constitution. But if it be once conceded that the presence of a quorum can be ascertained by any other method than by the calling of the roll, his entire argument must necessarily fall to the ground. In discussing the constitutional provision that two-thirds of both houses, whenever they deem it necessary, may propose amendments to the Constitution, X. M. C. insists that it is as imperative that two-thirds of a quorum should actually vote as that the number of States ratifying shall be three-fourths of the States in the Union; and his proposition is absolutely undeniable. He differs from Speaker Reed only in the method by which the presence of a quorum may be ascertained. When, however, he asserts that, if only four States voted on the proposition, Speaker Reed would, if he adhered to his logic, be compelled to declare the amendment carried, his argument sinks to the level of childishness. The term "quorum" can only be applied to an assemblage composed of many members acting as a single body. A State acts in its sovereign and separate capacity. To claim that any rule governing the proceedings of a deliberative body could apply to the separate action of distinct, sovereign, and independent States, is so absurd that it only serves to illustrate the facility with which a ready but unbridled wit may degenerate into extravagance.

If, he asks again, the roll-call disclosed that but one member voted in the affirmative, while 165 members were present, remaining silent in their seats, would the bill be declared a law? But in answering Speaker Reed's argument that many bills have been passed in Congress where but one or two votes have been cast in favor of them, X. M. C. argues, with irresistible logic, that the presence of a quorum is always presumed during a session, because

every member has it in his power at any time to demand a count of the House. If, however, a quorum may be present by presumption when, as a matter of fact, less than 100 members, and even less than 20 members, are in the House, surely the assent of 165 members present, though not voting, to the passage of the bill, may be presumed from their silence. If the physical presence of a quorum may be presumed with such effect as to give validity to a law passed by a House actually consisting of 20 members, it may with equal propriety be presumed that 165 members, sitting silent in their seats with power to defeat the bill by merely recording their votes, were content to see it passed. X. M. C. invokes the doctrine of presumptions when it strengthens his argument: he will undoubtedly be willing to permit his adversary to avail himself of a presumption less violent than the one to which he has himself appealed.

Passing, then, from the practical application of the rule, which, as we have seen, would produce none of the absurd results which X. M. C. has chosen to attribute to it, let us consider the constitutional aspect of the question.

The Constitution in terms empowers the House to compel the attendance of its members. Speaker Reed interprets this provision to mean that the House may compel the attendance of its members and count them after their attendance is secured. X. M. C. concedes that the House may compel the attendance of its members, but insists that no member can be counted as present except by his own consent.

It is plain that under the contention of X. M. C. the power to compel the attendance of members falls short of equipping the House with power to do its business. True, he suggests what he deems to be a remedy, and this suggestion we will presently consider; but it is certain that prior to the ruling of Speaker Reed the constitutional provision that the House shall have the power to compel the attendance of its members did not suffice to give it power to obtain a quorum.

It has not infrequently occurred in the past, after a call of the House had been ordered, that a call of the roll would disclose the presence of a large majority of members. Proceedings under the roll-call having been dispensed with, and the business of the House having been taken up, it would be found on the very first call that less than a quorum responded to their names. Another

call would thereupon be ordered, when a majority of the members would appear to be present, but on the resumption of regular business, the absence of a quorum would again be disclosed. To compel the attendance of members under such circumstances became merely an act of cruelty to the diligent members of the House. It simply resulted in imposing upon the already overburdened atmosphere of the chamber the support of several additional, and, in a legislative sense, useless, pairs of lungs.

When the Constitution empowered the House to compel the attendance of its members, it is fair to assume that the framers of that instrument believed that they had equipped the parliamentary body with power at all times to secure and maintain a quorum. As a matter of fact, however, a quorum previous to the assembling of the Fifty-first Congress could be secured only by the consent of the members. The breaking of a quorum became a regular feature of the filibustering process. It was a weapon so potent in the hands of the minority that it never failed to force the majority into a compromise involving a surrender, to some extent, of the principle in contending for which they had provoked the opposition of the minority.

X. M. C. discourses wisely and learnedly on the importance of a yea-and-nay vote in properly recording the proceedings of the House, and he argues with great force that the general policy of our constitutional system is to require every member to bear his proportion of the burden of legislation and assume his share of its responsibilities. These propositions no man can dispute. But when any considerable number of members, by refusing to obey the rules which require them to vote, can be held to deprive the House of the power to enact any bill to which they may be opposed, X. M. C. would give to their silence an importance which the Constitution denies to their votes. In other words, he would put a premium on disorder and disobedience. To state that, when the attendance of a member is compelled by the process of the House, that member, by a mere refusal to vote, can suspend all legislative proceedings, is to state that the Constitution equipped both houses of Congress with a power that could only be used for oppression, but which could never be made effective for the transaction of the public business.

It is quite true that for one hundred years the presence of a quorum has been determined by the calling of the yeas and nays.

It is equally true that in a House composed of members obedient to the rules it is the simplest and most effective method of ascertaining the number present. But where any portion of the House refuse to be recorded, it is perfectly plain that a mere calling of the roll does not establish the actual number of persons within the walls of the House. If for one hundred years the presence of a quorum had always been ascertained by a roll-call, that fact merely shows that for one hundred years the rules of the House had not been used for the purpose of carrying obstruction to such an extent as to practically place the entire operation of the legislative department of the government at the mercy of a small minority.

X. M. C. himself admits that there must be some means by which the House can provide a quorum to do business, even in the sense in which he understands the word quorum to be used in the Constitution. To use his own words : " Indeed, the discipline of the House would be destroyed, its government would be in chaos, if the practice of breaking a quorum at will by the refusal of members to vote could not be suppresssed." And then he proceeds to prescribe the remedy to which allusion has already been made. He asserts that, as a refusal to vote constitutes disorderly conduct, and as the House has the power to punish the disorderly conduct of its members, the true remedy would be to inflict a fine upon every member present in the House who might refuse to vote upon a call of the roll. Instead of the rule adopted by the present House, he suggests the adoption of the following rule :

"Rule XV. If a member shall refuse to vote on a call of the *yeas* and *nays* after being requested by the Speaker to do so, he may be fined by the Speaker, not exceeding $50; and until said fine is paid said member shall not be allowed to take part in debate in the House or in Committee of the Whole, nor shall he be allowed to present any question of order to the Speaker."

In suggesting this rule, X. M. C. has completely turned his back on the constitutional provision which permits the House to compel the attendance of its members, and relies entirely upon the provision which empowers it to punish for disorderly conduct. It must be apparent to the mind of the most prejudiced critic of Speaker Reed, on a first reading of this rule, that X. M. C. does not suggest the means by which the House can itself compel a quorum, but, rather, the means by which it can avenge itself upon those who deprive it of a quorum. The constitutional privilege of the House is not confined to the mere power to punish a mem-

ber who does not attend its sittings. It embraces the right to compel his attendance, and in the exercise of this power its officer can take the body of the member from any place in which he may be found within the limits of the United States, and produce him at the bar of the House, and keep him within the chamber, subject to the direction and control of the House. This is a very much broader power than the mere right to punish for a failure to attend. The rule suggested by X. M. C. would therefore involve the use of the lesser power and the abandonment of the greater. It would not compel a quorum, nor make one, nor maintain one. Indeed, it might be an effective means of depriving the House of a quorum. If a member declined to pay the fine, what would be the result? He might be suspended. In that case the prospect of a quorum would be still more remote. He might be imprisoned, but as he could be detained in custody only during the existence of the Congress, his imprisonment would make it impossible to count him as of the quorum. In the last hours of the session, with party feeling aroused to a high pitch of excitement, the attempt of the House to maintain a quorum by the imposition of fines would result in a ludicrous failure either to assert its power or to preserve its dignity.

It is amazing that a logician so acute as X. M. C. appears to be should have been betrayed by the strength of his feeling into such a grievous and palpable error. The remedy suggested by X. M. C. is in fact, no remedy at all. A remedy in law and in reason is something very different from a punishment. We may punish murder by death and larceny by imprisonment, but these punishments afford no remedy for the life which is lost or the property which has been abstracted. All moralists agree that it is the duty of society to prevent crime rather than to punish it, wherever prevention is possible. The very adoption of a penalty for wrong-doing is a confession that it is impossible to prevent the perpetration of the offence. If, therefore, the power of the House be reduced to the mere infliction of penalties for the breaking of a quorum, it is plain that it has no power to compel the existence of a quorum. But if we once concede that the House has no power to compel a quorum, the constitutional provision which empowers it to compel the attendance of members is absolutely valueless. X. M. C. relies upon the severity of the penalty to deter the members from practising this method of ob-

struction. But here he himself appears to be willing to depend upon that doctrine of chances for trusting to which he so strongly reproves Speaker Reed. Rule XV. as it now exists at least gives the House the means of proceeding with its business, and makes it impossible to obstruct the discharge of parliamentary business by the mere device of silence. Rule XV. as X. M. C. proposes to make it might enlarge by a few hundred dollars the surplus in the Treasury, but it would not of itself enable the House to obtain and maintain a quorum.

X. M. C. is fond of illustrating by a hypothetical absurdity a position which he assails. Let us see how the rule which he proposes would work in a critical emergency through which the nation might be compelled to pass.

Suppose that this country were involved in a trying and doubtful war with a foreign or domestic enemy; that a considerable minority of the House of Representatives was in favor of settling the controversy upon terms which had been rejected by the judgment of the majority; that a measure was pending before Congress authorizing the government to borrow the moneys which were absolutely essential to the successful prosecution of the conflict, and that the measure was reached on the last day of the session. What would be the operation of Rule XV., as suggested by X. M. C., under these circumstances? Let us assume that 175 members were present, of whom ten were so bitterly opposed to a continuance of the contest that they were ready to adopt the parliamentary weapon of obstruction in order to force the government to a capitulation. These ten members remaining silent in their seats, the 165 members who were ready and anxious to vote the supplies necessary to enable the government to defend its existence would have, according to X. M. C., the right to close the doors of the House and keep the ten inside. They could order a call of the roll, and if the ten members remained silent, the 165 would be powerless to pass the legislation essential to the very existence of the government. True, the Speaker could impose a fine of $50 upon each of the recalcitrant members; the power of the House would then be exhausted and the government itself would be imperilled, if not destroyed.

We have seen the amusing conceit in which X. M. C. has indulged at the expense of Speaker Reed and of Rule XV.,

by assuming that the Speaker would send a letter to the President claiming that 90 members out of 166 would be sufficient to override his veto. Let us imagine the letter which a Speaker of the House might send to the President, under the circumstances which we have supposed, informing him of the failure of the House to pass the legislation requisite to secure the funds necessary for the defence of the country through the refusal of a small minority to answer a roll-call.

FIFTY-FIRST CONGRESS,
HOUSE OF REPRESENTATIVES,
WASHINGTON, March 4th, 1891.

TO THE PRESIDENT:

The bill, H. R. 1111, authorizing the Secretary of the Treasury to borrow moneys necessary for the payment of our armies and for the purchase of munitions of war, was reached in the House to-day. One hundred and sixty-five members voted in favor of the bill—less than a quorum. Ten members who were present in the House, and who refused to vote, were each fined by me $50. The refusal of these 10 members to vote has deprived the House of a constitutional quorum, and the bill has therefore failed. While the failure of Congress to pass this legislation may force the government to conclude a peace upon any terms which the enemy may choose to dictate, the principle that a quorum can only be determined by the yeas and nays and the right of the House to punish recalcitrant members have both been fully vindicated. The country has been ruined, but the Treasury has gained $500.

Your obedient servant,
X. M. C., SPEAKER.

It may be urged that it is unfair to test the general practicability of a rule by its application to a particular day of the session. Let us, therefore, assume that the measure which we have supposed was reached during the middle of the session. In that case, the letter might be couched in the following terms:

FIFTY-FIRST CONGRESS,
HOUSE OF REPRESENTATIVES,
WASHINGTON, May 1, 1892.

TO THE PRESIDENT:

The bill to authorize the Secretary of the Treasury to borrow the moneys necessary to defray the expenses of the war in which the country is now engaged was reached in the House to-day. One hundred and sixty-five members voted in favor of the measure—less than a quorum. The measure has therefore failed to become a law. Ten members who were present in the House, and who refused to vote, were by me fined $50 each. They have refused to pay these fines, and they have been committed to the custody of the sergeant-at-arms. As it will be impossible to continue the defence of the capital, and as the enemy will naturally regard these ten members as his best friends, he will, in all probability, liberate them as soon as he shall have taken possession of the city. To keep them in custody it will therefore be necessary to conclude peace at the very earliest date. This is precisely what the ten recalcitrant members wish to accomplish. After the treaty shall have been signed, they will have no reason to persist in their contumacy, and they will, in all probability, pay their fines. There will, therefore, be reason for universal congratulation. The minority will have controlled the proceedings of Congress, and the majority will have collected $500, which may be applied to the payment of the indemnity exacted by our conquerors.

Your obedient servant,
X. M. C., SPEAKER.

It will be seen that the very worst effect which X. M. C. has chosen to attribute to Rule XV. as it now exists falls far short of the disastrous results which would flow from a rigid adherence to his theory that a constitutional quorum can only be secured by the consent of a majority of all the members of the House to answer their names on the call of the roll. The principle that the House can be deprived of a quorum while it has the power to compel the attendance of its members is absolutely inadmissible, and would lead to conclusions more extravagant than any imagined by Gilbert. While the House unquestionably has the power to punish any conduct on the part of its members which is forbidden by its rules, it has also the undoubted power to secure a quorum and to preserve it.

But, it may be asked, is it not a dangerous innovation upon parliamentary usages to give the clerk of the House the power to count a quorum ? Here we have the real ground upon which the position of Speaker Reed may be fairly criticised. The power to count a quorum is, indeed, a dangerous power to intrust to a servant of the House, and one which should never have been conferred upon him. Rule XV. is a salutary reform so far as it asserts the principle that a quorum consists of a majority of the members present in the House, whether voting or silent, and that the members present are presumptively present to do business. The method of ascertaining the presence of members under this rule is, however, entirely reprehensible. Under a parliamentary system which requires a majority to constitute a quorum, when the roll-call shows less than a majority voting, though a majority are clearly within the chamber, a system should be devised for ascertaining the number present which would leave nothing to vagueness or conjecture.

The quorum should be counted by the House, and not by the clerk or by the Speaker. The whole number present should be counted, and not the bare number necessary to make a quorum. When it is apparent that a quorum is actually present, while less than a quorum has voted, it is entirely competent and proper for the House to direct that the members who abstain from voting should be placed at the bar, and that in the presence of the whole House their attendance be noted and they themselves counted as of the quorum. Such a proceeding would remove any element

of doubt as to the identity of the members constituting the quorum. Such a rule would not be inconsistent with the provisions of Rule VIII. as they now exist, nor with any additional clause which might be adopted providing a penalty for a failure to obey its provisions. It would operate to preserve a more accurate record of the proceedings than any which has been heretofore known to Congress, by showing for the benefit of their constituents which members voted, which failed to vote through non-attendance, and which refused to vote in open defiance of the rules.

The inevitable result of filibustering by minorities has been the extension of the power of the presiding officer. When a minority becomes obstructive, the majority usually retaliates by curtailing the privileges which have been abused. The Speaker is usually the instrument by which the purpose of the majority is accomplished. The business of the House is placed more completely under his control, so that he may afford the majority an opportunity to secure the passage of the legislation which it desires. The power of the Speakership has thus increased enormously, and its growth has been at the expense of the parliamentary privileges of the individual members. The rule which has been under discussion is a striking instance of this tendency to confide to the Speaker powers which should be properly exercised by the House itself. Properly speaking, the Speaker is but the servant of the House; the organ by which it speaks as a body; the hand by which it attests its proceedings; the medium by which it preserves order. To restrict his powers to the discharge of these functions would be the very highest type of parliamentary reform.

With the power of the House to maintain a quorum fully established, the minority will see the wisdom of restricting opposition to the legitimate limits of parliamentary contention. The obstructive tactics of silence will be abandoned, because they will have become useless, and all parties, it may be hoped, will combine to curtail the power of the Speakership, which has of late years grown to such proportions as to constitute a serious menace to the freedom, and even to the stability, of parliamentary institutions.

JUDEX.